IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1453 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SAVITABEN WIDOW OF LALJIBHAI GANGARAM

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Appearance:
Ms. Maya Desai for MR MD PANDYA for
the appellant.
MR MC BHATT for Respondent No. 1-6

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CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 05/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

The appellant Corporation has challenged in this appeal, the impugned judgment and award dated 22nd August, 1983 passed by the learned Motor Accident Claims Tribunal, Ahmedabad (Rural), at Narol in Motor Accident Claims Petition no.2 of 1982 whereby the learned Tribunal partly allowed the claim petition of the respondents-claimants and awarded in all Rs. 77,000/- to the claimants as against the claim of Rs. 1,50,000/- with costs and interest at the rate of 6% from the date of the application till realisation.

2. Ms. Desai, learned counsel appearing for the appellant Corporation has restricted her arguments only on the point of negligence. She submitted that looking to the panchnama, it is clear that the deceased motor-cyclist was solely respsonsible for the accident and not the bus driver. In the alternative, she submitted that at the most, 50% negligence could have been attributed to the driver of the bus. As against this, Mr. Bhatt, the learned counsel appearing for the respondents-claimants vehemently submitted that the accident took place because of the sole negligence of the bus driver and the learned Tribunal has also rightly held that because of the rash and negligent driving of the bus driver, the accident has taken place. Therefore, this Court should not interfere with the same in this appeal.

3. For appreciating rival contentions raised by the learned counsel for the parties, we will have to consider the oral evidence of the witness Atmaram Ambalal at exh. 108 who claimed to be an eye witness and actually seen the accident and the panchnama of the scene of accident at exh. 115.

4. Witness Atmaram Ambalal at exh. 108 has stated in his evidence that the accident in question took place on23.8.1981 at 2.00 p.m. He was a passenger in the S.T. bus from Ahmedabad to Vijapur. It came from near Pathikashram but stand and was going to Vijapur through "Ch" road of Gandhinagar. He was in the third row from the driver's side. As the bus came out of the Pathikashram ST stand, there was an impact and the accident took place. It dashed with the motor-cyclist from the road side, as a result of which, the motor-cycle was thrown out. Thereafter, the bus stopped at a distance of 10 ft. According to him, the bus started with sufficient speed from the ST bus stand. It was already late. The motor-cyclist had received injuries on his head. However, in his cross-examination, he has

stated that he came to know about the accident when he heard noise of collusion between ST and motor-cycle. However, he has clearly admitted in his cross-examination that he does not know as to how the accident in question took place. In view of this admission, the learned Tribunal has simply refused to rely upon his evidence.

5. However, the learned Tribunal, relying upon the panchnama of the place of accident at exh. 115, held that the driver of the ST bus was solely negligent.

6. The panchnama of the place of accident is at exh. 115. As per the panchnmama, there was a damage on the left side of the motor-cycle which was lying at a distance of 14 ft. on the southern side of the road from the bus. It further shows tht extensive damage was caused to the ST bus on its front left side. The sheet below left head light of the bus was cut in the corner to the extent of 10" and there was a dent on the upper portion of the headlight to the extent of 5". As per the evidence of the eye witness Atmaram who claimed to be traveling in the bus at the time of the accident, the bus was going from Ahmedabad to Vijapur. After coming out from Pathikashram bus station of Gandhinagar, it was proceeding towards Vijapur through "CH" road. At that time, the motor-cyclist coming from Vijapur side dashed with the bus on its front left hand side. Thus, it seems that when the bus was appearing on the main road, and taking turn towards left side, at that time, the motor-cyclist came from Vijapur side and dashed with the front left side of the bus. The fact that as soon as the bus started, within no time, the accident took place on the road. Therefore, it is out of question that the bus would be in excessive speed. The way in which and the place where the accident took place, clearly suggest that the moor-cyclist has also contributed to the negligence. However, keeping in mind the fact that the responsibility of a bigger vehicle would be more and that the bus driver was appearing on the main road, therefore, he should have been extra cautious, we hold that the bus driver would be negligent at least to the extent of 70% if not 50% as submitted by Ms. Desai for the appellant Corporation. The fact that no brake marks of bus or motor-cycle were found on the road, suggests that both the drivers were negligent while driving their respective vehicles. The motor-cyclist was supposed to drive on its correct side i.e. on left hand side, but it seems that he was driving his motor-cycle on the middle of the road and when he saw the bus driver all of a sudden appearing on the main road, he was not in a position to control his vehicle and dashed with the bus on its front left side. Therefore,

30% negligence must be attributed to the deceased motor-cyclist. Accordingly, we hold that the learned Tribunal was wrong in holding the ST bus driver solely responsible for the accident. In our considered opinion, the bus driver had contributed 70%, whereas the motorcyclist contributed 30% in the accident.

7. In view of the above, an amount of Rs. 23,100/- has to be deducted at the rate of 30% from the total amount of Rs. 77,000/- awarded by the learned Tribunal to the respondents-claimants. However, learned counsel Mr. Bhatt for the respondents-claimants vehemently submitted that the learned Tribunal has awarded a meagre amount of Rs. 5000/- by way of conventional amount. He submitted that though there is no cross-examination filed by him on behalf of the claimants in this appeal and the findings recorded by the learned Tribunal have not been challenged, still, it would beopen for him to urge this contention in this appeal. In support of his submission, he tried to place reliance on two Division Bench judgments of this Court reported in 1993(1) GLH, 262 and (2) 2000(1)GLR, 177. It is true that in both the cases, the Division Bench of this Court awarded Rs. 20,000/- towards conventional amount considering steep rise in all respects. However, keeping in mind the fact that in the instant case, the accident took place way back on 23.8.1981 and that the learned Tribunal passed the award on 22nd August, 1983, we would not like to interfere with that amount after almost 20 years in this appeal. Merely because the appeal could be heard after so many years, it would not be a ground for us to interfere with the said amount awarded by the learned Tribunal which is just and proper. Therefore, this submission of Mr. Bhatt is rejected.

8. Mr. Bhatt then tried to submit that the learned Tribunal has wrongly taken into consideration the monthly dependency at the rate of Rs. 600/- per month and deducting 1/3rd for his personal use, the learned Tribunal assessed loss of future income at the rate of Rs. 400/- p.m. which would come to Rs. 4800/- per year. Considering the ageof the deceased which was 40 years at the time of the accident, the learned Tribunal applied multiplier of 15 years and awarded Rs. 72000/-. However, Mr. Bhatt submitted that the learned Tribunal has simply taken into consideration the salary income of Rs. 335/- per month of the deceased at the time of the accident, and the Tribunal has awarded only Rs. 165/per month towards selling vegetables by the deceased. He submitted that they have produced documents at exhs. 14 to 18 in support of their case, then the yearly income of

the deceased from the sale of vegetables would be at least Rs. 10,000/-per year. Instead of that, the learned Tribunal has simply taken into consideration yearly income of hardly Rs. 1500/- from the sale of vegetables. It is true that there are documents produced by the claimants in support of their claim, but having gone through those documents, we are of the clear opinion that the deceased would not be able to earn Rs. 10,000/per year. From the documents, it is clear that the deceased was illegally cultivating the land of Sabarmati river for which he was fined quite often. A person earning income illegally from illegal sources, that income should not be ordinarily taken into consideration. Inspite of that, the learned Tribunal has taken into consideration the same. Considering the fact that datum figure of Rs. 600/- per month was taken by the Tribunal, out of which 1/3rd was rightly deducted, we do not find any reason to interfere with the dependency assessed by the learned Tribunal at the rate of Rs. 400/per month which would come to Rs. 4800/- per year and applying the multiplier of 15 years, it would come to Rs. 72000/- . Thus, on this account, the judgment and award passed by the learned Tribunal is not required to be interfered with.

9. In view of the above discussion, the present appeal is partly allowed. It is held that the deceased Laljibhai Gangaram, the driver of the motor-cycle was responsible to the extent of 30% for the accident which took place and the bus driver was negligent to the extent of 70%. The learned Tribunal has awarded Rs. 72000/- towards future economic loss. Deducting 30% amount out of it towards negligence of the motor-cyclist, which would come to Rs. 21600/- it would come to Rs. 40,400/- and adding Rs. 5000/- towards conventional amount, it would come to in all Rs. 55,400/-. Accordingly, the impugned judgment and award passed by the learned Tribunal is modified. If the amount is lying deposited with the Tribunal, then after calculating the amount as per the present award, the learned Tribunal may hand over account payee cheques to the claimants after due verification. The learned Tribunal has awarded in all Rs. 77,000/- with costs and interest to the claimants. The said amount is reduced to Rs. 55,400/-. It is stated at the bar by the learned advocate Mr. Bhatt for the respondents-claimants that as per the award passed by the learned Tribunal, the respondents-claimants were permitted to withdraw the said amount with costs and interest. He therefore, submitted that balance amount of Rs. 21,600/- between principal amount of Rs. 77,000/- and Rs. 55,400/- be directed to

be deposited by the respondents-claimants with the Tribunal which can be withdrawn by the appellant Corporation after it is deposited with the Tribunal. Considering the facts and circumstances, Ms. Desai for the appellant Corporation has no objection if the balance amount of Rs. 21,600/- is deposited with the Tribunal by the respondents-claimants latest by 31st March, 2003. After the said amount is deposited, the Tribunal shall hand over the same to the appellant- Corporation by an account payee cheque. We also make it clear that if the said amount is not deposited, then the appellant-Corporation will be at liberty to recover the same from the respondents-claimants in accordance with law. The office is directed to draw the award accordingly as early as possible and preferably within one month from today.

(B.J.Shethna,J)

(Kundan Singh,J)

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